



[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2019-0110]

Qualification of Drivers; Exemption Applications; Hearing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt 29 individuals from the hearing requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. The exemptions enable these hard of hearing and deaf individuals to operate CMVs in interstate commerce.

DATES: The exemptions were applicable on November 19, 2019. The exemptions expire on November 19, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Docket Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Documents and Comments

To view comments, as well as any documents mentioned in this notice as being available in the docket, go to <http://www.regulations.gov/docket?D=FMCSA-2019-0110> and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE, Washington, DC 20590, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

II. Background

On October 16, 2019, FMCSA published a notice announcing receipt of applications from 29 individuals requesting an exemption from the hearing requirement in 49 CFR 391.41(b)(11) to operate a CMV in interstate commerce and requested comments from the public (FR 84 55375). The public comment period ended on November 15, 2019, and four comments were received.

FMCSA has evaluated the eligibility of these applicants and determined that granting exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(11).

The physical qualification standard for drivers regarding hearing found in

§ 391.41(b)(11) states that a person is physically qualified to drive a CMV if that person first perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951.

This standard was adopted in 1970 and was revised in 1971 to allow drivers to be qualified under this standard while wearing a hearing aid, 35 FR 6458, 6463 (April 22, 1970) and 36 FR 12857 (July 3, 1971).

III. Discussion of Comments

FMCSA received six comments in this proceeding. Edward Wassels from St. Louis Missouri commented that the hearing exemption process is unclear and would like FMCSA to provide an online status indication tool to help applicants better understand where their application is in the hearing exemption process. He would also like FMCSA to provide a step-by-step guide to help applicants have a better understanding of how the process works. FMCSA acknowledges Mr. Wassels' concerns and has updated the hearing application packages located on the FMCSA website with an overview of the exemption process to assist applicants in understanding the process and what specific information must be submitted. Dain Covington of Williamsburg, Virginia encourages those who are Deaf and Hard of Hearing and interested in operating a CMV to apply for a hearing exemption from FMCSA in order to obtain a CDL. He also recommended FMCSA reduce the waiting time for those who apply for a hearing exemption to speed up the process of obtaining a CDL. FMCSA processes hearing exemptions as quickly as possible. However, the Agency is required to publish a

Federal Register notice allowing the public 30 days to comment on the application for each exemption prior to making a final determination whether to grant or deny each exemption. J. T. Stryzyk provided two identical comments in support of Deaf and Hard of Hearing individuals being able to obtain a hearing exemption so that they can operate a CMV in interstate commerce. An anonymous commenter also provided support. Nicole Neft of Driver and Vehicle Services, State of Minnesota commented that Minnesota has no objections to Ryan Arrington and Abdiwahab Olow receiving a hearing exemption to drive in interstate commerce.

Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on current medical information and literature, and the 2008 Evidence Report, "Executive Summary on Hearing, Vestibular Function and Commercial Motor Driving Safety." The evidence report reached two conclusions regarding the matter of hearing loss and CMV driver safety: (1) no studies that examined the relationship between hearing loss and crash risk exclusively among CMV drivers were identified; and (2) evidence from studies of the private driver's license holder population does not support the contention that individuals with hearing impairment

are at an increased risk for a crash. In addition, the Agency reviewed each applicant's driving record found in the Commercial Driver's License Information System, for commercial driver's license (CDL) holders, and inspections recorded in the Motor Carrier Management Information System. For non-CDL holders, the Agency reviewed the driving records from the State Driver's Licensing Agency. Each applicant's record demonstrated a safe driving history. Based on an individual assessment of each applicant that focused on whether an equal or greater level of safety is likely to be achieved by permitting each of these drivers to drive in interstate commerce as opposed to restricting him or her to driving in intrastate commerce, the Agency believes the drivers granted this exemption have demonstrated that they do not pose a risk to public safety.

Consequently, FMCSA finds that in each case exempting these applicants from the hearing standard in § 391.41(b)(11) is likely to achieve a level of safety equal to that existing without the exemption.

IV. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) each driver must report any crashes or accidents as defined in § 390.5; (2) each driver must report all citations and convictions for disqualifying offenses under 49 CFR 383 and 49 CFR 391 to FMCSA; and (3) each driver is prohibited from operating a motorcoach or bus with passengers in interstate commerce. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. In addition, the exemption does not exempt the individual from meeting the applicable CDL testing requirements.

V. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VI. Conclusion

Based upon its evaluation of the 29 exemption applications, FMCSA exempts the following drivers from the hearing standard, § 391.41(b)(11), subject to the requirements cited above:

Jeremy T. Albright (CA)	Byron S. Allen (FL)
Carlos Arellano (CA)	Ryan Arrington (MN)
Jeffrey A. Barbuto (NH)	Dain Covington (VA)
Tymekia L. Crawford (TX)	Brian J. Davlin (NV)
John Fazio (OH)	Alvin Grasty (PA)
Derek Hawkins (NH)	Emil Iontchev (IL)
Shane Kennedy (FL)	Lacey Mathis (TN)
Billy Joe McClain (NY)	Danny W. McGowan (WV)
Allan Mitchell (NY)	Ronald Misner (CA)
Matthew Moore (TX)	Abdiwahab S. Olow (MN)
Timothy Roberts (TN)	Gilbert L. Swagger (TX)
Teddy R. Tice (NY)	Cameron Thomas (IA)
Tyler Turner (TN)	Jerry Ward (NC)
Edward Wessels (MO)	Joseph Williams (MD)
Thomas E. Wray (NC)	

In accordance with 49 U.S.C. 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) the person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Issued on: December 20, 2019.

Larry W. Minor,
Associate Administrator for Policy.

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